

RID (Rule Interpretation Decision)

(Use additional sheets as necessary)

Type of RID	Requested Response Time	DSD Assigned RID # 111
Customer RID <input type="checkbox"/>	24 hours <input type="checkbox"/>	
Internal Staff RID <input type="checkbox"/>	10 working days <input type="checkbox"/>	
	As time available <input type="checkbox"/>	

1. Project Name: Hookah Lounges

2. Project Number: n/a
(Plat #, Zoning Case #, etc.)

3. Project Street Address: n/a
(If not available nearest intersection of two public streets)

4. Applicant Name: n/a

5. Applicant Address: n/a

6. Applicant Telephone #: n/a

7. Applicant e-mail Address: n/a

8. Rule in Question:
(Section and/or policy of UDC, Sign Code, etc)

Zoning requirements to establish a hookah lounge in the City of San Antonio.

9. Applicant's Position:
(Including date position presented and name of city staff point of contact)

Date: June 21, 2012 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

The determination of a hookah lounge shall be based on the primary use of the property.

10. Staff Finding:
(Including date of finding and name of city staff person formulating finding)

Date: June 21, 2012 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

Throughout the past decade Hookah lounges, also called a shisha bar or den, have increased as a common business model in North America. Individual establishments vary in services provided but often include the following:

- Alcohol sales
- Food service, including coffee bars
- Live entertainment
- Sharing of flavored tobacco (sometimes known as "shisha" or "Mu'assel") from a hookah (also known as a waterpipe, narghile or Qalyan)

- Sale of products for use in a hookah instrument as well as sales of hookah instruments (including waterpipers, narghiles or Qalyans), materially similar to a “head shop”

Several of the land uses described above have specific zoning and supplement regulations that apply:

Activity	Use Determination for Table 311-2	Zoning Required	Supplemental Regulations	Smoking ordinance (Chapter 36)
Alcohol Sales	Bar/Tavern	C-3, D, L	Alcohol Distance requirements, see <u>IB # 168</u>	No interior smoking
Food Service	Food service establishment	NC, C-1, C-2, C-3, D, L, I-1	Alcohol Distance requirements, see <u>IB # 168</u> if applicable	No interior smoking
Live Entertainment	Live Entertainment 2 days per week or less	C-3, D	See <u>RID # 109</u>	No interior smoking
Live Entertainment	Live Entertainment 3 days per week or more	C-3 with “S” specific use authorization, D	See <u>RID # 109</u>	No interior smoking
Hookah instrument sales	Head Shop	C-3 with “S” specific use authorization	See UDC <u>Section 35-377</u>	No interior smoking
Tobacco Sales	Tobacco Store – Retail	NC, C-1, C-2, C-3, D		Interior smoking may be permitted pursuant to <u>36-7(6)</u>

It is noted that the Smoking Ordinance, Chapter 36 allows on premises smoking in tobacco retail stores, per Section 36-1

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to cigar bars and humidors.

The required zoning district for a particular business or land use is generally determined by the primary use on the lot or parcel. When a use on a property has multiple uses, the accessory use provisions of UDC 35-370 apply.

35-370. Accessory Use and Structure Regulations.

(a) Accessory Uses.

(1) An accessory use shall not be larger than 25% of the gross floor area of the principal use.

(2) Notwithstanding specific limitations in Table 311-2, an accessory use shall only be allowed in a zoning district where it is permitted as a principal/primary use, and in a district of lesser intensity (as further depicted in Table 311-2), pursuant to the following table:

(A) Use authorized as a principal use by right in:	(B) May be permitted as an accessory use in:
L or I-1	I-2
L, C-3, O-2, C-2, C-1, O-1, O-1.5, or NC	I-1
C-3, O-2, C-2, C-1, O-1, O-1.5, or NC	L
C-3, O-2, C-2, C-1, O-1, O-1.5, or NC	D
O-2, C-2, C-1, O-1, O-1.5, or NC	C-3
C-2, C-1, O-1, O-1.5, or NC	O-2
C-1, O-1, O-1.5, or NC	C-2
O-1, O-1.5, or NC	C-1
O-1 or O-1.5	NC

(3) Uses that are only allowed by approval of a Specific Use Authorization ("S") and not permitted by right ("P") in any zoning district shall not be allowed as an accessory use.

(4) Uses that are only allowed by-right in the "I-2" Heavy Industrial District or "MI-2" Mixed Heavy Industrial District shall not be allowed as accessory uses in a less intense zoning district, unless they occupy no more than 10% of the gross floor area of the principal use and are fully enclosed within the principal structure.

(5) Residentially zoned property shall not have accessory uses [save home occupations (see §35-378); ADDUs (see §35-371); or typical residential accessory structures, e.g. garages (attached or detached); carports; fences; storage sheds; swimming pools; greenhouses/gazebos; sport courts; etc.].

(6) A use specifically prohibited by an overlay district, such as the "RIO" or "ERZD" shall not be permitted as an accessory use when located within such an overlay district.

(7) Sales of alcoholic beverages for on or off premises consumption may not be an accessory use within the respective "NA" or "R" classifications.

(8) Where accessory uses are permitted, the standards of the applicable base zoning district, as well as any overlay district on the property, shall apply including but not limited to setbacks, building heights, landscaping and other requirements outlined in this Chapter except where otherwise provided in §35-370.

Pursuant to 35-370 (a)(3) above, any use or activity that is permitted only by specific use authorization can not be permitted as an accessory use. Specifically, hookah instrument sales would be considered a head shop and require specific use authorization and can not be permitted as an accessory use. Likewise, live entertainment uses may require specific use authorization in accordance with RID #109 <http://www.sanantonio.gov/dsd/pdf/RID109.pdf> and therefore can not be permitted as an accessory use.

The UDC definition for a "bar" directs the reader to see "tavern" which has the following definition:

Tavern. Any use in which seventy-five (75) percent or more of its gross revenue is derived from the on-premises sale and consumption of alcoholic beverages.

A hookah lounge that derives 75% or more of its gross revenue from on-premises sale and consumption of alcoholic beverages therefore shall be considered a tavern (bar), likewise if less than 75% of the gross revenue is alcoholic beverages than it shall not be considered a tavern (bar).

11. Staff Position:

(Including date position presented internally and name of city staff person formulating position)

Date: June 21, 2012 **Contact:** Andrew Spurgin **Contact Telephone #:** 207-8229

The determination of a hookah lounge shall be based on the primary use of the property. In conjunction with a building permit application or a certificate of occupancy, an applicant shall provide staff with sufficient information to determine which of the following use applies:

- Bar/tavern
- Food service
- Head Shop
- Live Entertainment
- Tobacco store – retail

Accessory uses are permitted pursuant to UDC Section 35-370. Pursuant to 35-370 (a)(3) any use that is permitted only by specific use authorization can not be permitted as an accessory use, therefore a hookah instrument sales would be considered a head shop and require specific use authorization. Likewise, live entertainment uses require specific use

authorization in accordance with RID #109
<http://www.sanantonio.gov/dsd/pdf/RID109.pdf> .

The following table may be used to help staff determine the appropriate zoning:

Activity	Determination for Table 311-2	Zoning Required	Supplemental Regulations	Smoking ordinance (Chapter 36)	Accessory Uses Permitted
Alcohol Sales – 75 % or more of gross revenue	Bar/Tavern	C-3, D, L	Alcohol Distance requirements, see <u>IB # 168</u>	No interior smoking	Food Service, Live Entertainment 2 days per week or less, Tobacco sales
Food Service	Food service establishment	NC, C-1, C-2, C-3, D, L, I-1	Alcohol Distance requirements, see <u>IB # 168</u> if applicable	No interior smoking	Tobacco sales, alcohol sales where less than 75% of gross revenue
Live Entertainment	Live Entertainment 2 days per week or less	C-3, D	See <u>RID # 109</u>	No interior smoking	Bar/Tavern, Food Service, Tobacco Sales
Live Entertainment	Live Entertainment 3 days per week or more	C-3 with “S”, D	See <u>RID # 109</u>	No interior smoking	Bar/Tavern, Food Service, Tobacco Sales
Hookah instrument sales	Head Shop	C-3 with “S”	See UDC <u>Section 35-377</u>	No interior smoking	Bar/Tavern, Food Service, Live Entertainment 2 days per week or less, Tobacco Sales
Tobacco Sales	Tobacco Store – Retail	NC, C-1, C-2, C-3, D		Interior smoking may be permitted pursuant to <u>36-7(6)</u>	Food service, alcohol sales where less than 75% of gross revenue

Alcohol distance requirements and smoking ordinance provisions shall apply in all instances as well as any other building codes and ordinances adopted by the City of San Antonio.

12. Departmental Policy or Action:

(Including date of presentation of policy or action to the applicant, the effective date of the policy or action, schedule for pursuing an amendment to the code if required and signature of the Director)

Date of policy/action: June 21, 2012

Effective Date of policy/action: immediate

Pursuant to the powers vested with the Director in accordance with UDC Section 35-311(b)(3) to define zoning requirements for materially similar uses, I hereby support the position of staff provided above in Section 11 of this document.



Roderick Sanchez, AICP, C.B.O
Director



Date